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Office of Secretary
Federal Communications Commission
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Washington, DC 20554

RE: Implementation of Section 224 of the Act, GN Docket No. 07-245

Clay Electric Cooperative (CEC) is a member-owned, non-profit rural electric cooperative, democratically organized and controlled by those it serves. Headquartered in Keystone Heights, Florida, CEC's service area stretches into fourteen (14) counties in northeast Florida. CEC has approximately 165,000 member-owners and over 12,900 miles of distribution and transmission lines consisting of approximately 229,737 poles. There are approximately 52,204 CATV pole attachments on 51,807 of these poles. CEC has over forty years experience working with CATV utilities on pole attachments with its first joint use pole attachment agreement being executed in 1966.

Clay Electric Cooperative files these comments in support of the comments filed by the National Rural Electric Cooperative Association (NRECA) in response to the Federal Communications Commission's (FCC) July 15, 2010 Order and Further Notice of Proposed Rulemaking (NPRM) regarding the Implementation of Section 224 of the Communications Act (Act).

The NPRM is of extreme interest to us. While 47 U.S.C. & 224(a)(1) of the Act exempts electric cooperatives from FCC pole attachment jurisdiction, any changes the FCC makes to its regulations can impact electric cooperatives. The Commission's regulations tend to set "standards" that impact pole attachment negotiations between electric cooperatives and attachment utilities.

- **The desire to speed up broadband deployment through expedited make-ready procedures must be balanced against the need to ensure safe and reliable electric service.**

CEC has over forty years of experience working with CATV utilities on pole attachments. By entering into its first pole attachment agreements with two different CATV utilities in 1966, CEC has a long history of working with and developing resolutions regarding pole attachments including make-ready procedures. By 1984, CEC had thirteen (13) agreements with CATV utilities. From the time of the first agreement up to present day, an emphasis has been placed on creating a timely process for establishing joint use of poles with this process being mutually agreed to by both the pole owner and the attachment utility. More specifically, the pole attachment agreement from 1966 required the pole owner to notify the pole attachment utility within thirty (30) days as to whether the application was approved or rejected. The pole owner was also required to furnish a make ready cost estimate, if applicable, within thirty (30) days after granting approval and detailed construction plans were submitted by the attachment utility. It should be pointed out that these timeframes have been evaluated and reviewed for their effectiveness over the years and they are still being followed today with the most current pole attachment agreements being mutually agreed to and executed within the last year. This illustration validates that the process for expediting pole attachment and make-ready procedures is already streamlined. It is our opinion that the pole attachment and make-ready procedures in place are effective and have been expeditiously set up so that they work for both parties.

It should be noted that a significant amount of time is spent preparing agreements between CEC and the pole attachment utilities with language, procedures and safeguards in place to help insure that the pole attachments comply with the safety standards and practices that govern the pole installations and the attachments. The focus of CEC in preparing these agreements has been to create a permitting process for the pole attachment utilities to follow that result in authorized pole attachments that can be installed in a timely manner without safety code violations.

Beginning in 1986, new pole attachment agreements required the CATV utility to furnish a design drawing prepared by a licensed professional engineer to be submitted with the permit application request to install pole attachments. An as-built certification by the professional engineer was also required for the purpose of ensuring the attachments were installed as designed to meet the applicable safety codes. This process clears the way to make certain any make ready work is identified up front and an expedited attachment effort can continue.

In spite of these efforts and the signed commitments to comply with the pole attachment agreements, there continues to be areas of concern that CEC faces on a regular basis regarding the installation of these joint pole attachments. The following are some of these issues:

- Unauthorized attachments or attachments installed without approval and permission through the permitting process as specified in the pole attachment agreement. A CATV pole attachment audit performed in 2008 resulted in a twenty-one (21%) percent increase in pole attachments over the previous years' billing. It should be noted that the annual billing is based on the number of pole attachments

permitted for installation and the number of documented attachments for removal as submitted by the attachment utility during the year with the total for the previous year used as a reference.

- Pole attachments approved through the permitting process that are not as-built certified as required by a professional engineer as being installed per the approved permit and that comply with the requirements for safety. The as-built certification is required per the contract agreement to complete the pole attachment installation. Unauthorized and uncertified attachments are known to cause accidents and damages that are both costly to the utilities and hazardous to the public. In 2010 alone, there have been at least four (4) accidents on our system due to CATV facilities not meeting clearance requirements resulting in damages to our facilities and interruptions to our customers' electric service. These preventable accident events result in unnecessary time and costs to repair damages, perform investigations for reporting purposes and prepare for litigation in some cases. Not to mention the potential for injury to the public. All of which could be avoided if the permitting processes and safe practices were

followed as outlined and agreed to in the pole attachment agreements.

- Existing pole attachments that do not comply with the required safety codes and construction standards that govern pole installations and attachments. In order to better manage and track for correction purposes the growing number of code violations on our system, the Cooperative became a member of the National Joint Utilities Notification System (NJUNS) this year. Since March of 2010, over ninety (90) CATV code violations have been reported with requests for correction sent to the pole attachment utilities. Most if not all of these safety code violations are due to incorrect construction practices by the pole attachment utility and their contractors and the lack of an as-built certification often times a result of pole attachments that were not approved or authorized in the first place by the Cooperative through the permitting process. As said previously, the time spent dealing with these items is significant and the liabilities as a result of unsafe pole attachments continue to increase.

The issues listed above have been confronted for many years with the pole owner and pole attachment utilities generally agreeing that the resolution lies in following the language established in the pole attachment agreements. The foundation of these agreements has been

based on creating a fair and timely process for CATV utilities to attach to electric poles without compromising the need to ensure safe and reliable electric service. Although there are ongoing concerns and issues regarding the safety of the pole attachment installations as listed above, there are thousands of successful and safe pole attachments existing today as a result of the pole owners and pole attachment utilities following and complying with the procedures created in the mutually agreed to pole attachment agreements. With that said the success of the pole attachment process will be measured by the pole attachment utilities willingness to follow through on the agreement procedures and by CEC's ability to manage the process should a lack of cooperation exist. It is CEC's opinion that expedited make-ready procedures that meet safety and reliability concerns have already been developed in existing contracts, mutually agreed upon by pole owners and attaching CATV's. The parties just need to abide by and adhere to existing contracts. More regulation is not needed.

- **Lowering pole attachment rates will not help spur broadband deployment in rural and sparsely populated areas.**

It has been the experience of CEC through observations of the various pole attachment utilities on our system that the pole attachment rate has not had an impact on plans to provide broadband service. The market and density of customers to provide a viable revenue payback are the most significant factors. Since CEC began working with CATV on pole attachments in 1966, the number of pole attachments has grown significantly over the years- growing to 15,557 pole attachments in 1985, increasing to 42,763 in the year 2000 and now reaching 52,204 pole attachments on approximately 51,807 poles today. During this time, CEC has had as many as

thirteen (13) CATV pole attachment utilities with this number decreasing through consolidation to just six (6) today. Three (3) being Comcast, Cox, and Bright House Networks which are large national companies and the other three being smaller, more local companies. Comcast, Cox and Bright House Networks pole attachments account for 87% of the total CATV attachments on CEC's system. These CATV utilities have had well established infrastructures providing broadband throughout most of their system for years. It is CEC's opinion that it is unlikely that a lower pole attachment rate would cause them to change their current plans regarding expansion of these services. Furthermore with each having far greater assets than CEC, it seems ironic that a small locally owned electric cooperative is being asked to subsidize large national companies with their pole attachment fees. One of the remaining three is a regional company already providing broadband services throughout the CEC service area that it serves. The remaining two pole attachment utilities are more local and to our knowledge do not provide broadband services in CEC's service area. These two companies have been struggling to support their core CATV business and both have expressed difficulties in establishing a profitable revenue stream considering the small number of potential customers per mile of line in the less densely populated rural areas. In addition, both have not paid their pole attachment fees for the last three years and have not increased their number of pole attachments. It is our opinion that it is unreasonable to expect that they would invest in building future broadband if the pole attachments rates were reduced when they have not used any of the "saved" resources from not paying for pole attachments in recent years for this purpose.

In both cases described above, reducing the pole attachment rate would only shift funds to larger companies (big corporations) with greater assets than CEC or smaller companies that cannot

support the CATV business much less invest in broadband. Nonetheless, the existing high density and availability of broadband services within CEC's service area supports the position that lowering pole attachment rates will not help spur broadband deployment within the CEC service area since a large majority of CEC customers already have broadband services available to them. With that said, these examples serve as reason that lower pole attachment rates will not be a significant factor in companies deciding to provide broadband in high cost less populated rural areas.

- **Our cooperative business model requires that pole attachers must pay their own way.**

As a non-profit customer owned utility, CEC's business model is based on the principal that services are provided on a "cost to serve" basis and should not be subsidized by another service or class of customer. In order to maintain this business approach, the cost of providing pole attachments is based on this "cost to serve" principal. In addition, CEC should not be forced to under recover its cost to provide pole attachments in order to subsidize the furnishing of broadband in the rural areas. This would only result in higher electric rates charged to its customers to make up these cost differences. CEC currently finds itself in this role with two of its attaching utilities not paying their attachment fees. CEC is working diligently to resolve this issue. In the case of the three larger national companies (Comcast, Cox, Bright House) it would be ironic to be placed in a position where a locally owned rural electric cooperative would need to subsidize large national companies with much larger asset base and revenues.

Conclusion:

- **We have the same goal – universal broadband – but the NPRM’s pole attachment proposals are the wrong “solutions.”**

CEC, NRECA, and the FCC obviously share the common goal of improving the opportunities denied to consumers who lack broadband services. While well intended, much of what the NPRM proposes to do in this proceeding would unnecessarily duplicate and in some instances complicate practices that have already been addressed and are currently in place. The proposals related to pole attachment costs while well intended in our opinion would not accomplish the desired effect and would only hinder our ability to appropriately recover our pole attachment costs. We urge the FCC to consider these comments and those of NRECA to more fairly balance the goal of speedier broadband deployment with the need to ensure the safety and reliability of our electric infrastructure and quality service to our customers.

Respectfully submitted,

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